

1 KRISTIN ZILBERSTEIN, ESQ. (200041)
JENNIFER BERGH, ESQ. (305219)
2 THE LAW OFFICES OF MICHELLE GHIDOTTI
1920 Old Tustin Ave.
3 Santa Ana, CA 92705
Office: (949) 427-2010
4 Fax: (949) 427-2732
Email: kzilberstein@ghidottilaw.com

5 Attorneys for Creditor
6 U.S. Bank Trust National Association, as Trustee
of the Igloo Series III Trust, its successors
7 and assigns

8 UNITED STATES BANKRUPTCY COURT

9 NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE

10 In re:) Case No. 17-52577
11)
Abraham Valerio) MRG-1
12 Debtor.)
13) Chapter 13
14)
15) OBJECTION TO CONFIRMATION OF
16) DEBTOR’S PLAN
17)
18) [TRUSTEE’S PENDING LIST]
19)
20) Property: 21-21A-21B DICK PHELPS ROAD
21) WATSONVILLE, CA 95076
22)
23)
24)

1 TO THE HONORABLE STEPHEN L. JOHNSON, UNITED STATES BANKRUPTCY
2 JUDGE, THE DEBTOR, HIS ATTORNEY OF RECORD AND THE CHAPTER 13 TRUSTEE,
3 DEVIN DERHAM-BURK (TR):

4 U.S. Bank Trust National Association, as Trustee of the Igloo Series III Trust
5 (“**Creditor**”), a secured creditor of the above-named Debtor hereby objects to the confirmation
6 of Debtor’s Chapter 13 Plan (the “**Plan**”) on the grounds that the Plan does not comply with the
7 provisions of Chapter 13 of Title 11, United States Code, and with other applicable provisions of
8 said Title 11.

9 This objecting Creditor holds a deed of trust on the Debtor’s real property commonly
10 described as 21-21A-21B DICK PHELPS ROAD, WATSONVILLE, CA 95076 (the
11 “**Property**”), which is Debtor’s principal residence.

12 **I**

13 **STATEMENT OF FACTS**

14 1. On December 3, 2007, Debtor executed a Balloon Note, in favor of Wells Fargo Bank,
15 N.A., with an original interest rate of 6.875% (“**Note**”).

16 2. On December 3, 2007, Debtor executed and delivered to Wells Fargo Bank, N.A., a Deed
17 of Trust, encumbering the Property, recorded on December 18, 2007, in the Official Records of
18 Santa Cruz, California as Document No.: 2007-0063352 (the “**Deed of Trust**”).

19 3. Thereafter, all beneficial interests in the Deed of Trust were assigned by Assignment of
20 Deed of Trust to Creditor.

21 4. The post-petition monthly mortgage payment owed to Creditor totals no less than
22 \$2,235.03 per month.

23 5. As of, the Petition date, the total to reinstate Creditor’s loan totaled no less than
24 \$227,974.35.

6. The total payoff of Creditor's loan totaled no less than \$869,532.72 as of the Petition date.

II

ARGUMENT

Application of the provisions of *11 United States Code Section 1325* determines when a Plan shall be confirmed by the Court. Based on the foregoing, as more fully detailed below, the Plan cannot be confirmed as proposed because the Plan does not comply with the provisions of Chapter 13 of the United States Bankruptcy Code. Pursuant to Rules 201(b) and 201(d) of the Federal Rules of Evidence, Creditor requests that the Court take judicial notice of the bankruptcy schedules filed in connection with the Instant Petition.

A) DEBTOR'S PLAN RELIES ON SPECULATION AND A FUTURE EVENT:

Debtor's proposed plan is merely speculative and Debtor asserts that he intends to either sell the Property by October of 2018. Secured Creditor objects to this treatment as speculative and prejudicial. Debtor may not premise the cure of Secured Creditor's arrears on a speculative event in the future such as a sale or refinance. Courts have long held that a plan should be not be confirmed where it is proposing a balloon payment or otherwise is contingent on a speculative event to take place in during the life of the plan. *See In Re Gavia* (9th Cir. BAP 1982) 24 BR 573,574; *In Re Nantz* (BC ED MO 1987) 75 BR 617, 618-619; *In Re Fantasia* (1st Cir. BAP 1997) 211 BR 420,424; *In Re Craig* (BC ND OH 1990) 112 BR 224,225.

Debtor has provided himself until October of 2018, or twelve (12) months to sell the Property. At the time of sale Debtor's default will be even greater than it is now. Secured Creditor will have incurred another eight (8) months of taxes and insurance expenses without reimbursement. Debtor's Plan should not be confirmed where Debtor relies solely on a speculative future event.

1 **B) DOES NOT MEET FULL VALUE REQUIREMENT**

2 11 U.S.C. §1325(a)(5)(B)(ii)

3 The Debtor's Plan does not provide for cure of the pre-petition arrears owed to Creditor.

4 The pre-petition arrears owed to Creditor are no less than approximately \$227,974.35.

5 Accordingly, Debtor will be required to amend his Plan to fully provide for the pre-petition
6 arrears owed to Creditor. Since Debtor's Plan does not provide for cure of the default of the pre-
7 petition arrears owed to Creditor, the Plan does not meet the full value requirement and fails to
8 satisfy 11 U.S.C. §1325(a)(5)(B)(ii).

9 **C) PROMPT CURE OF PRE-PETITION ARREARS**

10 11 U.S.C. §1322 (d)

11 The pre-petition arrears owed to Creditor are no less than \$227,974.35. In order cure the
12 Creditor's pre-petition arrears in sixty (60) months Debtor's monthly plan payment to Creditor
13 must total no less than \$3,799.57 per month during months one through sixty in order to
14 promptly cure Creditor's arrears. Debtor merely provides for a payment in the amount of \$10.00
15 to Creditor between month one (1) and month twelve (12).

16 WHEREFORE, Creditor objects to confirmation of the Plan and requests as follows

17 a. The Plan be denied confirmation and the case be dismissed.

18 DATED: February 14, 2018

19 THE LAW OFFICES OF MICHELLE GHIDOTTI

20 By: /s/ Kristin Zilberstein, Esq.

21 Kristin Zilberstein, Esq.

22 Attorney for U.S. Bank Trust National Association,
23 as Trustee of the Igloo Series III Trust
24

Michelle R. Ghidotti-Gonsalves, Esq. (SBN 232837)
Kristin A. Zilberstein (SBN 200041)
Jennifer R. Bergh, Esq. (SBN 305219)
LAW OFFICES OF MICHELLE GHIDOTTI
1920 Old Tustin Ave.
Santa Ana, CA 92705
Ph: (949) 427-2010
Fax: (949) 427-2732
mghidotti@ghidottilaw.com

Attorney for Creditor
U.S. Bank Trust National Association, as Trustee
of the Igloo Series III Trust, its successors
and assigns

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

In Re:)	CASE NO.: 17-52577
)	
Abraham Valerio,)	CHAPTER 13
)	
Debtors.)	CERTIFICATE OF SERVICE
)	
)	
)	
)	
)	
)	
)	
)	

CERTIFICATE OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of eighteen and not a party to the within action. My business address is: 1920 Old Tustin Ave., Santa Ana, CA 92705.

I am readily familiar with the business's practice for collection and processing of correspondence for mailing with the United States Postal Service; such correspondence would

1 be deposited with the United States Postal Service the same day of deposit in the ordinary
2 course of business.

3 On February 14, 2018 I served the following documents described as:

4
5 • **OBJECTION TO CONFIRMATION OF DEBTOR'S PLAN**

6 on the interested parties in this action by placing a true and correct copy thereof in a sealed
7 envelope addressed as follows:

8 (Via United States Mail)

9 10 11	Debtor Abraham Valerio 21 Dick Phelps Rd., #B Watsonville, CA 95076	Chapter 13 Trustee Devin Derham-Burk P.O. Box 50013 San Jose, CA 95150-0013
12 13 14	Debtor's Counsel Brette L. Evans Evans Law Offices 1150 N First St. #110 San Jose, CA 95112	U.S. Trustee Office of the U.S. Trustee / SJ U.S. Federal Bldg. 280 S 1st St. #268 San Jose, CA 95113-3004

15
16 xx (By First Class Mail) At my business address, I placed such envelope for deposit with
17 the United States Postal Service by placing them for collection and mailing on that date
following ordinary business practices.

18 _____ Via Electronic Mail pursuant to the requirements of the Local Bankruptcy Rules of the
19 Eastern District of California

20 xx (Federal) I declare under penalty of perjury under the laws of the United States of
21 America that the foregoing is true and correct.

22 Executed on February 14, 2018 at Santa Ana, California

23 /s/ Jeremy Romero
24 Jeremy Romero